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Note verbale dated 13 July 1995 from the Permanent Representative of the Netherlands to the United Nations addressed to the Secretary-General

The Permanent Representative of the Kingdom of the Netherlands to the United Nations presents his compliments to the Secretary-General and has the honour to submit to the latter the following.

At the first session of the Subgroup on Sanctions of the Working Group of the General Assembly on "An Agenda for Peace", the Netherlands, as a contribution to the discussion in the Subgroup, introduced a joint Australian-Netherlands paper entitled: "United Nations sanctions as a tool of peaceful settlement of disputes" (see annex).

The Permanent Representative of the Kingdom of the Netherlands would highly appreciate it if the present note verbale and its annex could be published as a document of the General Assembly under item 10 of the provisional agenda.

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Annex

United Nations sanctions as a tool of peaceful settlement of disputes: non-paper submitted by Australia and the Netherlands*

* The paper has been reproduced as received. The designations employed do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory or area, or of its authorities.

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I. INTRODUCTION

I.1 History of Article 41 of the UN Charter

The United Nations was formed with a view to establishing a collective security system under which the kind of disputes which led to the two world wars could be dealt with by peaceful and legal means. It is a forum for peaceful international relations between states, but is also a body capable of making authoritative and binding decisions to enforce security. Unlike its predecessor, the League of Nations, the United Nations has significant coercive capacity. Under the United Nations Charter, the Security Council is the body charged with responsibility for maintaining global peace and security. The UN Charter provides for a flexible and graduated response to international peace and security issues. The UN's role ranges from providing a forum for the peaceful settlement of disputes, including the coordination of negotiations between parties and regional measures/agreements, to enforcement action under Chapter VII of the Charter.

Article 41 of the UN Charter originates from Article 16, first paragraph of the Convenant of the League of Nations:

"Should any Member of the League resort to war in disregard of its convenants under Articles 12, 13, or 15, it shall ipso facto be deemed to have committed an act of war against all other members of the league, which hereby undertake immediately to subject it to the severance of all trade or financial, commercial or personal intercourse between the nationals of the convenantbreaking State and the nationals of any other State, whether a Member of the League or not."

Article 41 UN Charter, provides for the Security Council to impose sanctions on the aggressor state, which all member states are obliged to implement.

The founders of the UN considered that, for the Security Council to be able to fulfil its role effectively, it should have the power to determine what diplomatic, economic or other measures, not including the use of armed force, should be employed to give effect to its decisions, and that those measures should be obligatory for all members.

I.2 The Nature and Purpose of Article 41

Since ancient times, there have been many incidences of imposition of sanctions by one country or a group of countries.[1] However, the capacity for the international community to impose sanctions collectively has existed only since the end of the second world war, and has only been utilised with any frequency since the end of the cold war. In this paper we will only deal with collective sanctions decided upon by the United Nations Security Council. Collective sanctions under the auspices of the United Nations are different in nature to unilateral sanctions in a number of respects. Collective sanctions are imposed under Chapter VII of the Charter of the United Nations and the use of collective sanctions is governed by the principles embodied therein, unlike unilateral measures which are usually motivated primarily by the interests of the leading sanctioning state. Under Article 39, the Security Council may determine the existence of a 'threat to the peace, breach of the peace, or act of aggression' and the use of sanctions under Article 41 is authorized only as an action pursuant to a determination under Article 39. Article 41 provides that:

"The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

Under Article 25, the decisions of the Security Council are binding in international law and the member states of the United Nations are bound to implement them in their municipal legal systems. Collective sanctions, if they are fully implemented, are therefore a much more potent tool than unilateral sanctions. Also the content of article 2 (5) UN Charter is important for the execution of UN sanctions measures. Article 2 (5) reads: "All member shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement actions".
A widely supported and effectively implemented regime of collective sanctions can truly isolate a state and pressure it to conform to the standards of international relations. In this way, sanctions can operate as an effective international policy tool in the graduated response to threats to international peace and security.

I.3 The Current Practice of the United Nations Security Council

The use of Chapter VII measures was very limited in the first 45 years of the UN's existence. However, the years since the end of the cold war have seen a metamorphosis in

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[1] These are documented with great accuracy and detail in G.C. Hufbauer, J.J. Schott and K.A. Elliott, Economic Sanctions Reconsidered: History and Current Policy, and Economic Sanctions Reconsidered: Supplementary Case Histories, Second Edition, (Institute for International Economics, Washington D.C.), 1990.

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the way in which global peace and security is established and maintained. Problem solving is perceived increasingly as a collective responsibility, and there has been an exponential increase in both the will to act collectively through the United Nations and the range of circumstances in which the United Nations is prepared to take such action. The greater willingness to work consensually towards the resolution of security problems in the post cold war environment has also been reflected in the functioning of the Security Council itself, which has seen its role expand considerably as the international body with primary responsibility for global peace and security. To date there have been ten cases of the imposition of collective sanctions, eight of which have occurred since 1991. The case studies below outline briefly the nature of the situation to which sanctions were applied by the Security Council and the role of the sanctions in that situation.

1.3.1 Southern Rhodesia[2]

The sanctions against Rhodesia were the first comprehensive mandatory economic sanctions imposed under Article 41 of the UN Charter. They were imposed to express the international community's non recognition of the independence of Rhodesia and to pressure its racially based minority government to allow the operation of a fully participatory democracy. The collective sanctions were imposed over an extended period of time. The illegitimate Southern Rhodesian government took power in 1965. In 1966, after several years of condemnation of the Southern Rhodesian government, the Security Council imposed selective mandatory sanctions on purchase of Southern Rhodesian goods such and export to Southern Rhodesia of arms related material, aircraft, petroleum products and motor vehicles. In 1968, these measures were upgraded to comprehensive mandatory sanctions covering all trade with Southern Rhodesia. The sanctions were entirely lifted in 1979 as a result of a politically mediated settlement under which democratic majority rule was restored.

During the time when the sanctions were enforced, they were not universally observed by the member states. Along with numerous minor violations of the sanctions by neighbouring countries, an amendment was made in 1971 to the sanctions regulations which allowed the United States to import $212 million dollars worth of ferrochrome and other materials over the next six years. Although no state recognized the self declared independence of Southern Rhodesia, there was a marked lack of willingness to enforce the sanctions which was interpreted by the Smith regime as an indication that the sanctions would eventually collapse due to lack of support[3]. The willingness of South Africa to turn a blind eye to breaches of sanctions was a major weakening factor. South Africa never accepted the legitimacy of the imposed sanctions. The Southern Rhodesian economy had some success in internalising its economy, particularly as the period of the sanctions stretched over more than a decade.

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[2] UNSC res. 216, 232, 253, 333, 388, 409, 463.

[3] M. Doxy, International Sanctions in Contemporary Perspective, (MacMillan, London), 1987, pp.41-46.

1.3.2 South Africa[4]

The imposition of the Apartheid system in South Africa occurred in 1948. There were unilateral sanctions imposed at various times by a number of countries and collective sanctions by countries of the Commonwealth. In addition, at various times the United Nations called upon member states to sever trade, cultural and diplomatic links with South Africa voluntarily as a means of applying pressure with a view to forcing the South African government to dismantle Apartheid. However, it was not until 1977 that the Security Council acted under the authority of Chapter VII to impose a mandatory embargo on arms and other military supplies to South Africa. Although the underlying motivation of the action was to strike at the Apartheid system, the embargo was justified as a Chapter VII threat to the peace because of the general fear that the situation in South Africa could erupt into an armed conflict.

The UN Security Council never imposed comprehensive economic sanctions against South Africa, perhaps due to the significance of South Africa in the world supply of numerous minerals which are necessary to industrial economies[5]. The position of South Africa in global trading patterns meant that the political will was lacking in many spheres for a program of sustained comprehensive economic isolation, in contrast to some of the more recent sanctions cases. The Security Council lifted the sanctions against South Africa in May 1994, after the first democratically elected government was formed in South Africa.

1.3.3 Iraq[6]

Iraq's occupation of Kuwait in August 1990 was a violation of international law and a classic case of the kind of aggression for which the Security Council was created: violation of one state's territorial sovereignty by another through military invasion. It was also a classic situation which called for the imposition of collective sanctions under Chapter VII of the UN Charter.

The sanctions against Iraq were more comprehensive, and imposed more quickly, than any previous sanctions regimes. The sanctions prohibited all trade and financial transactions with Iraq and Kuwait and for the first time set up a sanctions monitoring committee to oversee the implementation of the sanctions. The Security Council later imposed an air embargo on flights to and from Iraqi or Kuwaiti territory (Res 670 September 1990). Unlike the Southern Rhodesian and South African cases, they were imposed in response to an actual act of aggression rather than a perceived threat to the peace. The sanctions

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[4] UN res. 418, 421, 558, 591, 919.

[5] This is described with statistical details in Chapter 9 "The Case of South Africa", in M. Doxy, International Sanctions in Contemporary Perspective, (MacMillan Press, Hampshire), 1987.

[6] UN Res. 660, 661, 666, 670, 686, 687

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against Iraq were intended to produce a shock to the Iraqi economy which would force the complete and immediate reversal of the invasion as well as the longer term objectives of demilitarization of Iraq and compensation to those who had had property confiscated in Kuwait during the occupation.

In its resolutions on Iraq, the demands of the Security Council included the unconditional withdrawal from Kuwait and the acceptance of the international boundaries of Kuwait, and Iraq's submission to a program of demilitarization, including the destruction and prohibition of biological and chemical weapons, long range ballistic missiles and nuclear proliferation. To date, Iraq has complied (some what reluctantly it must be said) with almost all of these conditions. But Iraq has yet to demonstrate full compliance with the requirement to destroy all chemical and biological weapons and to return all Kuwait property seized during the invasion. Although there has been some difference of opinion within the Security Council over interpretation of the sanctions regime, and in particular whether partial compliance should be rewarded in some way, at this stage the Security Council has resolved that the sanctions will remain fully in force until such as time as Iraq complies fully with Security Council demands.

There is much evidence to suggest that the economic sanctions are having grave humanitarian consequences in Iraq and that this is being portrayed within Iraq as evidence of the international victimization of Iraq. There is also evidence that scarce supplies of food and other essential commodities are being directed largely to the military and government sectors, with the result of significant shortages and consequent suffering amongst the civilian population[7].

1.3.4 Yugoslavia[8]

The question of what should be the appropriate international response to the war in the former Yugoslavia has created much vexation. The war began as an internal conflict within the Federal Republic of Yugoslavia, but the dissolution of the federation and the establishment of some of its components as sovereign states has meant that the conflict is now also an international conflict. The United Nations did not become involved in the conflict in the early stages, preferring to give cooperative support to the efforts of the European Community to mediate between the parties. However, by 1991 the Security Council decided that it should treat the situation in the former Yugoslavia as a threat to international peace and security under Chapter VII.
In September 1991, the Security Council approved a general and complete arms embargo on the former Federal Republic of Yugoslavia. For the purpose of overseeing the

[7] This is described in detail in J. Dreze and H Gazdar "Hunger and Poverty in Iraq, 1991", World Development 1992, Vol. 20, No. 7.

[8] UNSC res. Serbia-Montenegro: 752, 757, 787, 820.
UNSC res. Bosnia-Herzegovina: 942.
UNSC res. former Republic of Yugoslavia: 713.

implementation of the Vance plan, the Security Council also mandated the United Nations Protection Force (UNPROFOR) in February of 1992 which would oversee the implementation of the Geneva Accord, signed in 1991, and protect the personnel of international humanitarian agencies working in the region.
As the Serbian parties to the conflict were perceived as the primary perpetrators of the war, the Security Council imposed comprehensive mandatory sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY), which included a prohibition on all trade and financial transactions with the FRY, a complete ban on flights to and from FRY territory, and the obligation to reduce diplomatic, sporting and cultural links. In response to the continued belligerence of the Bosnian Serbs, sanctions were imposed in April 1993 increasing the severity of existing sanctions against the FRY and extending their application into areas in Bosnia under the control of the Bosnian Serbs. Like the sanctions against Iraq, the obligation to comply with the sanctions against the FRY was backed by the authority to use force to ensure compliance.

In September 1994, after it was judged that the FRY had taken genuine measures to close its border with Bosnia-Herzegovina in order to reinforce the blockade on the Bosnian Serbs, the Security Council eased the sanctions for a one hundred day period initially by allowing civilian passenger flights to and from Belgrade airport, allowing passenger ferry services from the FRY to Italy, and lifting the prohibition on sporting and cultural exchanges.

1.3.5 Libya*

The Libyan case is unusual because it did not involve a civil war, an internationally condemned illegitimate government or an act of aggression against another state per se, but rather the refusal of Libya to hand over to foreign jurisdiction two of its nationals who were alleged to be involved in certain acts of international aviation terrorism. Sanctions were imposed against Libya in March 1992 by Resolution 748 when the Security Council determined that the failure of the Libyan government to comply with the demand for the handing over of the two officials, and the support for terrorist activity against international aviation which this implied, constituted a threat to international peace and security. The sanctions were not comprehensive as in the case of Iraq and former Yugoslavia, but involved an arms embargo, a ban on sale or supply of aircraft, aircraft components and engineering and maintenance services related to aircraft and any services or products which are destined to be used for construction of airfields and related facilities and equipment. The sanctions also required that states reduce diplomatic representation in Libya. As in the case of Iraq and former Yugoslavia, a sanctions monitoring committee was established. Sanctions were tightened further in November 1993 (Res 883) by requiring the freezing of Libyan assets, except for use in the supply of petroleum, petroleum products and agricultural commodities and by prohibiting the export to Libya of a list of products which was annexed to the resolution. These sanctions are currently still in force.

* UNSC Res. 731, 748, 883

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1.3.6 Haiti[10]

The situation in Haiti was related to the internationally agreed illegitimacy of the military government and its human rights abuses against the Haitian people. The Security Council determined it to be a Chapter VII threat to international peace and security. The United Nations was initially involved in the movement toward democracy in Haiti in 1990 when it responded to a request by the provisional government of Haiti to supervise the elections which were scheduled for that year, and in which Father Jean Bertrand Aristide was elected to the presidency. Within months of the elections, Aristide and his government had been overthrown by a military coup d'état. The Organisation of American States (OAS) took the leading mediation role in Haiti from this time onward, and its involvement in the Haitian situation included the regional imposition of sanctions against Haiti. In June 1993, the Security Council involved itself by imposing a mandatory oil and arms embargo on Haiti. These measures were lifted in August after the signing of the Governors Island Agreement, which was expected to provide a constructive resolution to the turmoil in Haitian politics. In October 1993, it was clear that the Governors Island Agreement was not being respected by the military authorities in Haiti and the sanctions were reimposed and were strictly enforced until September 1994, when the government of Haiti was returned to President Aristide.

1.3.7 Liberia[11], Somalia[12], Angola[13] and Rwanda[14]

The cases of Liberia, Somalia, Angola and Rwanda are largely similar from the point of view of collective sanctions. All four cases involved the collapse of internal order into bloody factional fighting, and, particularly in Rwanda and Somalia, consequent refugee crises. The content of the respective sanctions regimes was however different.

The civil war in Liberia broke out in 1989 between the National Patriotic Front of Liberia (NPFL) and the United Liberation Movement in Liberia for Democracy (ULIMO). Since then the regional organization Economic Community of West African States (ECOWAS) has taken primary responsibility for attempting to bring peace to Liberia, and the Security Council's involvement in the situation has been largely in response to and support of the activities of ECOWAS. In November 1992, the Security Council conducted a lengthy discussion of the conflict in Liberia which concluded with the passing of Resolution 788 in which a comprehensive military and arms embargo was imposed on Liberia.

The fighting between Somali clans was vicious and largely uncontrollable, and the food crisis - believed to be the most severe and widespread in recent history - meant that the

[10] UNSC res. 841, 861, 873, 875, 917, 944.
[11] UNSC res. 788, 813.
[12] UNSC res. 733.
[13] UNSC res. 864.
[14] UNSC res. 812, 846

conflict had degenerated to the level where individuals were faced with either killing to obtain scarce supplies or starvation. In these circumstances it was difficult for either the UN or the US operations in Somalia to achieve their objectives, and the difficulties encountered by UNISOM and United States' Operation Restore Hope resulted in a loss of international credibility for these missions. As part of the response of the Security Council to the crisis in Somalia a comprehensive arms embargo was imposed in January 1992, which remains in force.

The conflict in Angola is primarily between the Popular Movement for the Liberation of Angola (MPLA) and the National Union for the Total Independence of Angola (UNITA). There had been a civil war between the two groups until a ceasefire was called and the parties agreed to UN supervised elections in 1991. The MPLA won government in those elections, and the result was immediately disputed by UNITA with the result that fighting again broke out. The Security Council finally took action under Chapter VII in September 1993, when it imposed an embargo on arms and related material, military assistance, and petroleum and petroleum products. The embargo was specifically targeted at UNITA[15], and required that the embargo be in force for all areas of Angola except a list of authorised entry points which was provided by the Angolan government. The embargo remains in force while fighting between government forces and UNITA continues.

Rwanda is another example of a civil conflict so fierce that by the time it erupted into a threat to international peace and security there was little which could be done by the international community that did not involve an unacceptable level of risk to personnel. The efforts to relieve the situation in Rwanda have focused on the humanitarian crisis in the refugee camps on the border of Rwanda and Zaire. A mandatory arms embargo was imposed by the Security Council soon after the fighting broke out, and remains in force to date.

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[15] The targeting of a specific group and not a country is uncommon, the only other example being the Khmer Rouge in Cambodia which was singled out by the General Assembly and not the Security Council. Singling out a group in this way can be helpful in getting to the real source of the problem, but this is only possible with the cooperation of the government in the relevant country, as is the case in Angola and Cambodia. Where there is no stable and effective government structure, such as in Somalia or during the massacre in Rwanda an embargo against only the groups which are waging the conflict is almost impossible to enforce.

Australia-The Netherlands

II. PREPARING A SANCTIONS REGIME

II.1 Defining the Situations where the Use of Sanctions is Appropriate and Effective

The basic objective of imposing sanctions should be to induce a change in the behavior of a particular state (or sometimes an organization), whether that may be to compel a desired course of conduct or to bring to an end a course of conduct since by such behavior, international peace and security are threatened. For example, sanctions have been used to attempt to bring an end to Apartheid in South Africa, to put pressure on Libya to release its nationals for trial, to force the return of President Aristide (and hence to ensure the restoration of democracy as in Haiti), as a measure to assist in restoring order to the anarchy of Rwanda and Somalia, and to force Iraq to change its behavior following its invasion of Kuwait. In some cases, sanctions are imposed, being at the same time a signal to the international community of the unacceptability of certain behavior. In the context of the sanctions against Libya, for example, several members of the Security Council referred to the action as a means of deterring state sponsored terrorism generally.

If sanctions are to be a credible collective policy measure and to play an effective role in the graduated response to threats to international peace and security, it is important that they should have defined and achievable objectives within a realistic time frame. The following are some of the factors that can be used in assessing the appropriateness of the use of sanctions and the likely effectiveness of a specific regime.

II.1.1 The level of threat to global peace and security

The UN Charter prescribes measures against 'any threat to the peace, breach of the peace, or act of aggression' which the Security Council may determine (Article 39). This implies that sanctions are to be used in situations where there is a threat to peace and security. In some situations this is clearly the case, for example Iraq invasion of Kuwait was an act of aggression which breached a basic rule of international law. However, the Security Council is not limited in its operation to circumstances where the threat to or breach of security is obvious. The meaning of security is not limited to situations of armed conflict. Threats to human rights, the potential flow of refugees, criminal activity such as aviation terrorism may result in threats of international peace and security[6].

II.1.2 Failure of conciliatory measures

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[6] In 1992, the President of the Security Council said that "...the non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security." (Note by the President of the Security Council S/23500 of 31 January 1992, pp.3)

Non-paper

Sanctions can play an important role in the graduated response to threats to international peace and security. The UN Charter prescribes sanctions as an intermediate measure between the use of force and other measures such as dispute resolution or other humanitarian assistance. The decision to impose sanctions should preferably only be taken when it is clear that the means for 'pacific settlement of disputes' provided in the Charter is not effective in resolving the conflict.

There has been considerable discussion in recent years of the concept of preventative diplomacy as a means of preventing situations which may require the United Nations to resort to sanctions or ultimately to military intervention. Rwanda is an horrific example of a complete collapse of civil order which the United Nations was all but powerless to stop by the time it erupted. Preventative diplomacy does not necessarily need to be the responsibility of the United Nations but can often be most effectively carried out by regional organizations. However, when such measures fail, sanctions may be the next step to be considered and should be coordinated in consultation with the relevant regional organization and taking into account action already taken by that organization.

II.1.3 Types of sanctions

Because of the need to differentiate as much as possible between the general population and the perpetrators of the conflict, a sanctions regime can be tailored to more closely target specific offenders. And, also in this context, the increased use of analysis of the target state's economy could be useful. In the case studies, the kinds of sanctions imposed vary from the comprehensive sanctions targeting trade, cultural and diplomatic links (Iraq and the FRY), to the much more specific sanctions (Libya) and arms embargoes. In some circumstances a package of selective sanctions may be able to minimize civilian impact, while still effectively pressuring the relevant actors.

Since arms and military equipment are primarily used by governments and parties warring against governments, an embargo on goods such as these is likely to be more effective where the primary aim of the sanctions is to weaken the military capacity of parties to a war. In countries such as Somalia and Rwanda, where the civil war was associated with widespread famine, comprehensive economic sanctions would have been inappropriate, whereas the selective embargo on export of military and related equipment may have a more helpful effect on the immediate problem.

Selective prohibition of specified goods can also be a useful way of streamlining the impact of sanctions. By choosing specific goods which are strategically important to the target group within the country, other goods which may have economic importance to sanctioning countries can be excluded. One problem with targeting specific goods is that goods which are economically important to the target country are usually also economically important to the sanctioning states. In the Southern Rhodesia case, the sanctions were initially focused on the primary commodities which were Southern Rhodesia's staple exports. However, because these exports were required by a number of other countries, there was a reluctance to comply with the sanctions and hence significant circumvention of the embargo.

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II.1.4 Coordinating sanctions with other measures

Collective sanctions in the post cold war era have not been used as an isolated instrument of UN policy. Unlike the cases of Southern Rhodesia and South Africa, where the sanctions were primarily symbolic and were the only direct measures taken by the United Nations against those countries, the more recent sanctions cases have often been part of a much more comprehensive program of decisions. On the part of the UN, these have included, mediation, negotiations, arbitration, negotiations between parties, election monitoring, humanitarian efforts and the deployment of peacekeeping forces.

Regional organizations have taken a leading role in conflict resolution, sanctions have been coordinated with the efforts of those regional organizations in order to maximize effectiveness. In the case of Haiti, the Organization of American States (OAS) had imposed sanctions against Haiti though these were not mandatory. The Security Council, using its authority under Chapter VII, then reinforced the measures of the OAS by imposing Article 41 sanctions, binding upon all states. Sanctions can play an important role in a graduated response to threats to international peace and security and, as noted above, could in certain cases be coordinated in consultation with the relevant regional organization and taking into account action already taken by that organization.

II.2 Avoiding Ambiguity in Drafting a Resolution

Unlike a treaty which has been carefully negotiated and where the implementing legislation (if necessary) can be prepared in advance of the instrument entering into force, a sanctions resolution is binding on member states of the United Nations from the date stipulated by the Security Council (often with near immediate effect). As the decisions of the Security Council become binding obligations on states in international law, it is important that those obligations be clearly understood by the parties which are obliged to implement them. This is important both for the target state in understanding what the Security Council is requiring of it, and member states in understanding exactly what the responsibility to implement requires of them. Clarity of drafting, and where appropriate the increased use of uniform provisions, will limit also the need for states to approach the relevant Sanctions Committee, which are already burdened with a considerable amount of paperwork, with queries about interpretation. The following are more specific comments on ways in which ambiguity in drafting sanctions imposing resolutions can be avoided.

II.2.1 Clarity of demands upon the target state

In order to target a particular aspect of a state's behavior, there needs to be some fairly specific statement of what the target state is supposed to do in response to the sanctions. An increased use of the practice of explicitly linking the lifting of "tranches" of sanctions with compliance by the target state with identified Security Council demands can be the most effective way of inducing the change in behavior (see also below in section VI.1. "The carrot and stick approach").

Non-paper

II.2.2 Clarity in defining the scope of the sanctions

Some countries have experienced difficulties in the implementation of sanctions resolutions because the scope of particular measures may be too broad or because the terminology is not universally recognised. For example, the requirement in Resolution 883 prohibiting the export to Libya of goods or services for the purpose of constructing or maintaining a military or civilian airfield was difficult for a number of countries to implement because of the lack of specificity; taken to its logical (but exaggerated) conclusion, this measure could for example include shovels, lighting, paint etc. For countries with a customs system which operates by only prohibiting the import/export of certain specific items, prohibitions on goods used for a particular purpose ("end use") are both difficult to implement and unwieldy to regulate. Also the use of specific rather than universal technical terminology in definitions, such as in the use in Resolution 883 relating to Libya of the standards of the American Society of Mechanical Engineers, can create difficulties. Obtaining guidelines relating to those standards and effectively translating them into municipal law (where different standards may be used) causes unnecessary delays in, and may render impossible, the sanctions implementing process.

Another way on ensuring clarity and ease of interpretation of sanctions resolutions is by the use of standard provisions where appropriate. It is already the case that the wording of sanctions resolutions tend to be modelled on earlier cases and it may therefore simply be a matter of time before a more standardised and widely understood discourse of sanctions will emerge. This will assist both in reducing some difficulties in the interpretation and implementation of sanctions and in reducing the workload of Sanctions Committees. The practice of issuing guidelines on sanctions implementation is also important in this regard.

II.3 The necessity of analysing economies

With the imposition of a sanctions regime on a particular country several choices need to be made with regard to its content.

In the case of a UNSC decision to impose economic sanctions it is valuable to assess as precisely as possible, what the effect of an economic sanctions regime will be. It should not be the intention to affect the civilian population of the target country, but to affect that part with the economic and political power.

To facilitate this assessment three issues could be analyzed:
- the national economy of the target state;
- in close relation to this, its economic relations with other states;
- the society and social structure of the target state.

The first issue refers to the economic situation of the state in question. Without proper data of its processes and indicators, including major imports and exports, trading patterns etc., it is difficult to determine what the effects of an economic sanctions regime will be on the national economy of the target state. The third issue will give insight into the national social problems that might occur as a result of the imposition of the measures.

Australia-The Netherlands

II.3.1 The economy of the target state

The economy of a state consists of several economic indicators and processes (among others):

- division between and the size of the primary, secondary, tertiary and quartairy sector[17];
- an open or a closed economy;
- presence of natural resources (especially crude oil and natural gas);
- Refinery capabilities;
- military expenditure;
- possibilities for economic growth:
  - + employment
  - + inflation (hyperinflation)
  - + import and export
  - + investments
- multiplier-effect: the expected effect of investments on the national economy.
- Budget-deficit;
- Gross National Product (GNP);

By collecting the necessary data and analysing these indicators for a particular country, it is possible to determine what the strong and weak points of its economy are. Using this basic information in the preparatory stage/phase of a sanctions regime, the UNSC can shape a sanctions regime more precisely. Most of the required data will be available through the international financial institutions (IMF, Worldbank), UNDP or OECD.

An economic sanctions regime can be devided into 4 forms, which can be applied simultaneously or separately:

1. to limit or ban export (embargo);
2. to limit or ban import (boycott);
3. the institution of financial measures;
4. the suspension of concessional relations (sports, culture).[18]

Lifted and still existing economic sanctions regimes vary from case to case. Against one country a limitation of export (embargo) is in force, while against an other country a limitation of import is in force (boycott), or both in combination.
With the use of the national economic indicators and the characteristics of the different forms of an economic sanctions regime it is possible to decide on what form to use in that specific economic embargo.

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[17] An economic division between different kinds of work. Primary sector: agriculture, mining, fishery and hunting; Secondary sector: industry; Tertiary sector: service providing sector; Quartairy sector: part of the social life that includes the Public Services, Defence, Social Security, Public Health, and Public Transportation.

[18] R. van der Laan, Economic Sanctions in theory and practice, November 1994, no. 11, pp. 16

II.3.2 Economic relations with other states

Economic sanctions can only be effective if the target state is part of a structure of international economic transactions. In the world today it is difficult for a state to exclude its national economy from the world economy. No state can afford to discount the possibility of suspension of economic transactions with other states. There are always export an import relations and no country has the possibility to have an entirely closed economy.

Thus, not only the states' economy must be analyzed, but its economic relations with other states are also of importance.

II.3.3 Analysis of Society and social structure of a target state

In addition to an economic analysis, the social structure of a society should be reviewed. Whenever an economic sanctions regime is imposed it will most likely have consequences for the social environment of the target country's population. Due to the sanctions, the economic climate could deteriorate, causing (among other effects), withdrawal and suspension of investments, raising unemployment, and (hyper)inflation. The mayor aim of the analysis of the social structure is to avoid as much as possible the unintended negative effects for the civilian population and to establish a clear picture of the most likely effects on this social structure.

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II.3.4 Conclusion

From the above the following can be concluded:

- Whenever the decision is made to impose an economic sanctions regime, the analysis of the national economy will indicate which set of measures is expected to be the most effective.
- Secondly, the analysis gives insight in the interweaving of the economy of the target state with economies of other states.
- It is necessary to assess the effects of sanctions on the civilian population because it could contribute to a reduction of unintended side effects. An analysis of the social structure of the target state can indicate where these problems might occur.

II.4 Analysis of possible unintended negative effects for third states (art. 50 Charter)

As sanctions become more frequently used as an international policy tool (and this seems currently to be the case), the effectiveness of the regimes will be increasingly dependant on the success of measures aimed at mitigating the effect of sanctions on third states (third states are countries bordering the target state or closely related by history or economic relations). Sanctions are weakened if they are not widely supported, and neighbouring states may be reluctant to enforce the regimes rigorously if they are likely to suffer consider economic hardship (and particularly if little thought has been given to ways of mitigating such effects).

The Security Council could consider ways in which a sanctions regime could be streamlined to minimize the effect on third states (again, this underlines the potential benefits of increased use of economic analysis). In his report on article 50, the Secretary General recommended that,

"...the Security Council might, when considering the imposition of enforcement measures, request the Secretariat to prepare background material on the economies of the neighbouring States or of States that have particular economic links with the target States, as well as some prospective analysis on the predictable effects of the intended measures at the macroeconomic level."[19]

Armed with such information, the Security Council would be able to better consider the effect of the sanctions on third states, the degree to which it would impact on the

[19] "Report of the Secretary-General pursuant to the note by the President of the Security Council (S/25036) regarding the question of special economic problems of states as a result of sanctions imposed under Chapter VII of the Charter of the United Nations", A/48/573, pp. 49.

effectiveness of the sanctions regime as well as the kinds of measures which would minimize the effect on third states while not compromising the effect on the target.

Further, the UNSC indicated that:

"It is important that states confronted with special economic problems not only have the right to consult the UNSC regarding such problems, as Article 50 provides, but also have a realistic possibility of having their difficulties addressed."[20]

In analysing possible unintended negative effects for third states the following distinctions can be made:

1. "Categories of losses and costs.
   A general framework for identifying special economic problems arising from the carrying out of those measures should include, basically, three broad categories of specific losses and costs:
   (a) those relating to the trade links with a target country (import and export);
   (b) those relating to the financial links with a target country;
   (c) those relating to sectoral or other special links with a target country."[21]
2. Timeframe: long-term and short-term impact of sanctions.
   Long-term impact of sanctions (the impact lasting well beyond the date when sanctions are lifted) may be as severe as the short-term impact (the impact until the moment of lifting the sanctions). In other words, the revocation of sanctions by the UN will not lead to an automatic recovery of the economy.
3. Directly or indirectly related economic problems.
   A third country with direct links to the economy of the target state can experience direct economic problems, as a result of the implementation of a sanctionsregime.
   Indirect economic problems occur if countries, other than third, develop problems because of the international crisis in general, such as the impact of the sudden rise of oil prices, lost business opportunities, or the stopping of financial aid. These indirect problems are not necessarily the result of the sanctions regime.

With the use of these distinctions an clear overview can be made of the most problematic effects countries can experience or are experiencing.

II.4.1 A few examples

A

A first example reflects trade related problems. Investors estimate a politically unstable situation or an armed conflict to present a bad investment climate. It is also possible the

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[20] An agenda for peace, Report of the Secretary-General, A/47/277, S/24111.

[21] Economic assistance to states affected by the implementation of the UNSC resolutions imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro), A/48/573, S/26705, pp.23.

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conflict would spread to adjoining countries. Besides this it is possible they have already lost a considerable amount of money on uncollectible loans and due payments. A long-term impact is expected, for confidence building takes a long time.
A short-term impact of trade related problems can be observed when trading routes are blocked as a result of the imposed sanctions. After the lifting of the sanctions trade traffic can be resumed immediately.

B.
Another effect is problems with the energy supply and production. Due to the existence of a sanctions regime prices of certain organic raw materials (crude oil, natural gas, coals)increase. This will diminish the competitive position of the countries affected by the rise in prices. It is a indirectly related economic problem causing export losses and import costs. It is very difficult to determine the timeframe of the impact, because the prices of the organic raw materials may remain high after the lifting of the sanctions regime, instead of returning to the old price level.

II.5 Analysis of unintended social and humanitarian effects

Through the increased use of economic and political analysis of the target state by the UN Secretariat, the Security Council could be in a position to make better informed decisions regarding the likely effectiveness of the sanctions, including information on vital sectors of the target state's economy as well as the potential effects of the sanctions on the general population[22]. In some cases, sanctions can affect the actual offenders less than they do the civilian population, and this is one of the primary reasons for some commentators to express a lack of confidence in the effectiveness of sanctions as an instrument of foreign policy[23]. The use of such specific economic analysis, which is discussed further below, could assist in determining types of sanctions which, for example, would minimize the effect on the civilian population while maximizing the effect on the target state's economy and, in particular, on the offending parties (usually the government) within the target state.

It seems that in some cases the underlying rationale behind the imposition of wide ranging sanctions is the assumption that such sanctions will make the target state's government change its behavior because of the effect of the measures on the civilian population or the measures will provoke the civilian population in the target state in a way that they force their government to change its behavior. On the other hand, as the targets of sanctions may not be states organized on the basis of fully democratic principles, the link between power

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[22] Requiring this type of analysis, to be prepared by the Secretariat in advance of the imposition of a sanctions regime, would of course have resource implications for the UN.

[23] "The Civilian Impact of Economic Sanctions", in Lori Fisler Damrosch: Collective Intervention in Internal Conflicts, (Council on Foreign Relations, New York), 1993, pp.274-316.

and popular legitimacy is likely to be weak and the capacity of a population suffering from the effects of economic sanctions to pressure for change in government policy may be limited. Indeed, it can have the contrary result, with the power of the government being reinforced and the international community perceived as the villain.

II.5.1 social effects

Sanctions can be especially hard on the vulnerable layers of the populations. Problems in obtaining food, fresh drinking water, healthcare, housing and fuel are common and likely to be exacerbated by sanctions.

Unemployment rates are likely to increase, as the industry stops producing; export of products, import of raw materials may be banned, and the national market in most cases will not be large enough to provide enough trading possibilities. This will have a drastic effect on the civilian population.

The case of the former Yugoslavia has demonstrated that a new kind of social class is likely to emerge under influence of the applied sanctions regime. With the emergence of a black market, huge profits can be made. The difference between the several layers in society will increase. In the former Yugoslavia this resulted in severe reduction of the middle class and the predominant presence of mafia like organised crime syndicates.

II.5.2 Humanitarian effects

Unbalanced nutrition and shortage of medical supplies could seriously affect the medical situation in a country under sanctions. Although every sanctions regime includes an exemption for the provision of foodstuffs, and medical supplies, the distribution of these items is not always adequately undertaken due to obstruction by the Government of the particular country, subjected to UN sanctions.
When applying a sanctions regime, it is important to seek close co-operation with organisations specialized in the field of social and medical problems. Most of these organisations (UNHCR, the Red Cross, Unicef) are likely to be present in the target country. Therefore, they are in a position to provide information before the imposition of a sanctions regime as well as after.
It should be stressed that humanitarian relief efforts are also undertaken by individual UN member states, regional organisations (European Union) and other non-governmental organisations.

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III APPLICATION OF A SANCTIONS REGIME

III.1 Difficulties experienced by national authorities in implementing binding decisions ex art. 41 UN Charter

The state's domestic legal system has to offer a legal framework in order to implement SC decisions under national law. Numerous countries have to change their national legislation to create the mere possibility of converting international law into national law. In several countries, sanctions legislation still has to be created - a fact causing delay given that adopting new legislation normally does not happen overnight.
Another difficulty in this context is the variety of legal systems in the world.

III.2 Time frame for Implementation of Sanctions

Time has increasingly become a critical factor in the collective implementation of sanctions, the Security Council's intention being in many cases to produce an immediate shock impact on the economy. In Resolution 418, 4 November 1977, the Security Council requested implementation reports to the Secretary General by 1 May 1978, allowing seven months for reporting. By way of contrast, Resolution 661 imposing sanctions against Iraq required implementation reports to the Secretary General within 30 days. Similarly, the Resolution imposing sanction against Libya requested reports within 45 days and the Resolution against the FRY requested reports within 22 days. This increased urgency in the implementation of sanctions must lead to questions about the way in which states implement sanctions in domestic law and to consideration of ways to ensure that timeframes are realistic. The 'shock' impact of sanctions on the target state can be lessened if bureaucratic and legislative processes cause delays in municipal implementation. In terms of the objectives of the Security Council, the ideal means of implementing sanctions is by specific enabling legislation or regulations which allows for the direct effect of sanctions measures or for the executive authorities within a state to bring sanctions into force as soon as the obligation arises internationally. However, each state is constitutionally and politically different and not all states have such specific enabling legislation. Where a situation is particularly urgent, most states have procedures where legislation can be approved within a short timeframe, but their parliaments or lawmaking bodies may not always share the priorities of the Security Council (particularly where they are remote geographically from the target state or have little contact with it). For this reason, timeframes for entry into effect of the measures should be realistic and near-immediate measures should be reserved for the most serious occasions.

III.3 The importance of uniform implementation by member states

A resolution should be drafted in such a manner that uniform implementation will be possible. If states react in a different way to resolutions issued by the SC, a dangerous and misleading situation of different interpretation of their content could be created. To avoid any confusion and uncertainty it is therefore important to implement and apply the

sanctions in a uniform, clear and transparent way. Clear guidelines by the Sanctions Committees could help to clarify the grey areas of a sanctions regime.

III.4 Creation of a questionnaire: State practices compared

In order to get insight into the different ways and means of national implementation of UN sanctions it is useful to compare state practice in this respect. Unfortunately, the reporting obligations for UN member states under the existing sanctions regimes have so far not resulted in sufficient information on the subject. Attached to this working document is a draft questionnaire. This questionnaire is formulated with the aim to get the above mentioned insight into the different implementation processes used, problems encountered with implementation, as well as any domestic economic problems which may result from the implementation of sanctions. The questionnaire will eventually be sent to UN member states for consideration.

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IV. THE WORKING PRACTICES OF SANCTIONS REGIMES

IV.1 Administrative shortcomings of the UN machinery

Administrative problems within the UN secretariat have been experienced, especially concerning the execution of notifications and no-objections procedures. At the moment, for example, there is a backlog of several thousands of requests in the Sanctions Committee on the former Yugoslavia.
In order to solve this problem, first the procedures could be standardized in a more efficient way. Further, the number of the UN personnel should be increased so that applications from various countries can be processed more rapidly. Finally, the responsibility of the state where the applications under the notification or no-objection procedure originate should be emphasized. Only applications which are thoroughly screened and well prepared should be communicated to the UN Sanctions Committee for consideration.

IV.2 UN Sanctions control mechanism

Following the imposition of a UN sanctions regime, the uniform implementation of the measures in member states should be undertaken. This will usually take place by the introduction of national legislation of some sort as referred to above.
In addition to national implementation throughout member states, close monitoring of the enforcement of the sanctions regimes is of utmost importance. Monitoring can be devided in national monitoring and international monitoring. In addition to monitoring mechanisms, enforcement operations can be established (e.g. naval blockades).

IV.2.1 National Monitoring

National monitoring is performed by institutions and organs, operating under auspices of the authorities of the individual member states. The main purpose of national monitoring is to ensure that individuals and institutions under the jurisdiction of the member state concerned will not engage in activities in violation of the sanctions regime. National monitoring should also include investigation and prosecution of violations of the UN sanctions regime, as well as the subsequent punishment of those convicted of violations of the sanctions regime.

IV.2.2 International Monitoring

International monitoring of implementation and execution of UN sanction regimes is first and foremost conducted through the UN Security Council. In the case of an alleged breach of a sanctions regime, occurring within the jurisdiction of one of the member states, the Security Council (or the relevant Security Council Committee) will consider appropriate action. It is the prerogative of the Security council to decide on the nature of the measures.

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In most cases, the Security Council Committees are established in the resolution with which a particular sanctions regime is created.
The Security Council Committee established by Security Council resolution 724 (1991) in the case of the former Yugoslavia, might serve as an example. The original mandate of this Committee was supplemented by paragraph 13 of Security Council resolution 757 (1992) in which it is decided that the Committee shall undertake, among others, the following tasks:

- to examine reports by States on the implementation of the UN sanctions regime;
- to seek additional information from states on the implementation of sanctions measures;
- to consider any information brought to its attention by states concerning violations of the measures imposed and in that context, to make recommendations to the Council on ways to increase their effectiveness;
- to recommend appropriate measures in response to sanctions violations and provide information on a regular basis to the Secretary-General for general distribution to member states;
- to consider and approve guidelines for the "execution" of the sanctions regime;

In addition to monitoring by the Security Council, the international community can decide to monitor the sanctions regime in the immediate area surrounding the member state that has been subjected to a sanctions regime.
In the case of the sanctions regime against the former Yugoslavia, the most substantial sanctions monitoring and enforcement regime that has been established, consists of pure monitoring of sanctions, Sanctions Assistance Missions (SAM's) and enforcement.
Some examples are:

1.) Monitoring is performed by (among others) the Observer Mission of the International Conference on the former Yugoslavia. This Mission observes the performance of the authorities of the Federal republic of Yugoslavia (Serbia and Montenegro) in executing the self imposed embargo against the Bosnian Serbs in neighboring Bosnia Herzegovina.

2.) In the framework of the European Union and the Organisation for Security and Co-operation in Europe (OSCE), so called Sanctions Assistance Missions (SAMs) have been established. The SAMs, mainly consisting of customs personnel from OSCE member states, are based in the countries surrounding the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnia-Herzegovina: Albania, Bulgaria, Croatia, Hungary, FYRO Macedonia, Rumania and Ukraine. The SAMs assist authorities (on a national and local level) in the respective host countries in executing the sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb territory in Neighbouring Bosnia Herzegovina.The Western European Union (WEU) is conducting a monitoring mission on the Danube

3.) On the Adriatic a combined NATO WEU naval operation enforces the embargo at sea by monitoring, verifying and if necessary, by turning vessels back. The use of force if necessary, is allowed to execute the mandate.

In addition to the examples of sanctions monitoring related to the former Yugoslavia, mention can be made of the joint efforts by members of the international community to

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effectively enforce the sanctions regime against Haiti by means of a naval blockade and against Iraq by naval interdiction.

Strict monitoring and appropriate enforcement of UN sanctions regimes will contribute to the overall effectiveness of the instrument (i.e. to prevent large scale sanctions busting activities) by increasing the leverage on the state subjected to a sanctions regime. The case of the former Yugoslavia has demonstrated that various institutionalised control mechanisms (SAMs, observers and naval enforcement on the Adriatic) are indispensable in this respect.

IV.2.3 Administrative procedures related to exemptions from UN Sanctions regimes

In most, if not all, UN sanctions regimes, exemptions have been created for supplies intended for medical purposes, foodstuffs (to be notified to the Sanctions Committee) and essential humanitarian supplies (approved by the Sanctions Committee on a case by case basis).
To facilitate the actual supply of these goods, administrative procedures have been created by the UN Security Council. The Security Council established several Security Council Committees (Sanctions Committees), responsible for the day-to-day execution of a sanctions regime (see paragraph above on sanctions control mechanisms and administrative shortcomings of the UN machinery).

IV.3 Measures/possible sanctions against sanctions busters

The questions how to treat states which violate UN sanctions remains an important element in the working practices of sanctions regimes. What should the international community do in order to convince a state to strictly enforce a sanctions regime? First, the classical diplomatic tools could be useful: demarches and negotiations by the member states of the SC could possibly persuade a country to act in accordance with SC decisions. In case of grave breaches, the state could be published on a "sanctions black list".

IV.4 The need for a compulsory reporting procedure for member states

A regular and uniform reporting system would be most useful in order to monitor the implementation as well as the measures of enforcement of sanctions regimes by the member states. Although the resolutions generally request reporting, only a small number of member states actually do provide the information. The actual number of replies is unsatisfactory resulting in a considerable and unfortunate lack of knowledge about the practice of implementation and ultimately about the likely effectiveness of the regimes. One way to resolve this problem would be for the SG or the Security Council to appeal urgently to member states to provide comprehensive information on their ways and means of implementation and the measures taken to comply with the sanctions regimes.

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IV.5 The need for clarification: interpretive guidance by the Sanctions Committees

Member states approach the UN Sanctions Committees with questions regarding the interpretation of certain "grey areas" in UN sanctions regimes.
Clear interpretative guidance by the Security Council and its subsidiary organs can contribute to a more uniform implementation and could solve problems of interpretation. Guaranteeing a uniform interpretation by member states will increase the credibility of a sanctions regime. To increase the transparency of the work of the Sanctions Committees it would be advisable to publish the interpretations of the Sanctions Committee.

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V. SANCTIONS REGIMES AND THIRD STATES

V.1 History of article 50 of the UN Charter

The convenant of the League of Nations already referred to an agreement between the Members states with reference to possible negative consequences suffered by those Member states as a result of the imposition of a sanctions regime.
Article 16. section 3 stated: "The Members of the League agree. further. that they will mutually support one another in the financial and economic measures which are taken under this article. in order to minimise the loss and inconvenience resulting from the above measures(....)".

With the demise of the League of Nations and the creation of the United Nations this section was integrated into draft Article 50. This was seen however as providing the possibility for the target state itself to make an appeal to the UN on basis of this article.
Such a situation could obviously have led to a conflict. with the result of nullifying the effect of sanctions were target state's have been given assistance under the article. On the one hand the Security Council had the possibility to impose a sanctions regime on a target state. while on the other hand it had to advice that target state on possibilities to solve the negative consequences. In order to prevent a situation arising. Article 50 was drafted in its present form and is clearly intended to apply only to third states.

V.2 The theory and practice of Article 50

The network of international economic and diplomatic relationships is built upon the premise that such links operate to the advantage of all states. When sanctions are imposed. not only the target state but also the sanctioning states themselves (and some more than others) can often suffer from the severance of economic relationships. The purpose of Article 50 of the UN Charter is to address the problems of states (most often neighbouring states of the target state) which suffer from severe disruption of trading patterns as result of sanctions. However. because sanctions have so rarely been used since the Charter was drafted. the practical effect of Article 50 had not been brought into question till the moment of increased use of sanctions by the Security Council in recent times.

In the cases of Iraq and the FRY. numerous applications for assistance under Article 50 have been made by states adversely affected by the sanctions regimes. and there has been little consideration of how these applications can be addressed. In each case. the Security Council has acknowledged the legitimacy of the request of the affected state and called upon other member states to render technical and financial assistance. But. in practical terms. the issue of specific compensation has not been elaborated upon extensively.

Currently, submissions under Article 50 are made to the committee established to oversee the relevant sanctions regime. There have been petitions made under Article 50 in relation to Southern Rhodesia (2 states). former Yugoslavia (8 states) and Iraq (21 states). Bulgaria and Sudan have foreshadowed Article 50 requests in relation to sanctions against Libya.

The response has invariably been an appeal to all states to render 'immediate technical, financial and material assistance' to the requesting state and an invitation to 'competent organs and specialized agencies of the United Nations system, including the international financial institutions, and the regional development banks to consider how their assistance programs and facilities might be helpful to the requesting state[24]. In a few cases, a study of the economic difficulties of the requesting state has been conducted[25]. In each case, the Secretary General has requested reports from states and international organizations on the implementation of the request for Article 50 assistance.

[24] Identical words were used both in response to the claims with respect to sanctions against Iraq (S/22021, 20 December 1990) and the claims with respect to sanctions against the former Yugoslavia (S/26040, 8 July 1993).

[25] Zambia in relation to Southern Rhodesia and Jordan in relation to Iraq.

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V.5 The discussion on art. 50

V.5.1 The Charter Committee

Several proposals have been made to assist states adversely affected by a sanctions regime. They include the establishment of a fund to compensate affected states, the improvement of consultations (both before and after the imposition of sanctions) between the Security Council and those States most likely to be affected, enhancing the role of international financial institutions in this field, and the adoption of a more flexible approach by the competent committees and organs of the Security Council in discharging their mandate with respect to sanctions regimes. It has also been stated that a focal point should be established for coordinating the assistance to affected third states[26]. This diversity in proposals reflects the discord existing between member states regarding the economic problems arising for third states.

The most significant proposal - one that has caused considerable discussion - is the establishment of a trust fund by the Security Council or the UN General Assembly. Especially the proposal has, naturally, been supported by third states suffering from economic problems caused by a sanctions regime.
Arguments against such a fund are (among others) that no support for the concept can not be found in the UN Charter. Another argument against a compensation system is the diversity of problems relating to the sanctions regime. No one case is the same and it would therefore be extremely difficult to establish procedural guidelines to assess economic damage directly related to a sanctions regime. For this reason it may be preferable to consider each case on its merits.

The Special Committee on the Charter of the UN is aware of the existence of the problem and has recommended that discussion on the issue be confirmed in an appropriate forum. Further, the proposals made by delegations on this issue during the discussion in the Committee should continue to be analyzed. It has also been argued that proposals made by delegations in the Committee should be analyzed further.

V.5.2 View of the Security Council

The question of special economic problems of States as a result of sanctions imposed under Chapter VII of the UN Charter has been examined by the Security Council. In a note of the president, the Security Council agreed with the Secretary-General that special consideration should be given to states adversely affected by sanctions and that they should have the right to consult the Security Council with regard to their problems.

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[26] Report of the Special Committee on the Charter of the UN and on the Strengthening of the Role of the Organization. A 49 33, art 50-83.

In other fora of the UN, the involvement of financial institutions and other components of the UN system is also being considered. The Security Council has determined, that the matter should be considered further and has noted the Secretary-General's recommendation that the Council should devise a set of measures.[27]

VI. CHANGES IN THE SANCTIONS REGIME

VI.1 The "Sticks and Carrots" approach: the gradual lifting of sanctions

As the Australian Foreign Minister, Gareth Evans, states in "Cooperating For Peace": one way to ensure that sanctions play an effective role in the graduated response to threats to international peace and security "is to introduce a broad range of sanctions measures and undertake to lift them progressively as particular targets are achieved".[28] He continues: "This has been the Commonwealth approach to its South African sanctions. Four 'tranches' of sanctions have been identified (viz the sports boycott and other 'people to people' sanctions; trade sanctions; financial sanctions; and the arms embargo); each has a different 'trigger' for its lifting - from the abolition of Apartheid in sport for the first tranche, to installation of a fully-elected government for the last".[29] Such a strategy has been used recently in relation to the former Yugoslavia where sanctions were partially lifted for an initial period of 100 days on the basis that the government of the former Yugoslavia had made genuine efforts to control the border with Serbia and Montenegro. In conjunction with sanctions, other types of positive motivators can be used, such as aid programs by the IMF and World Bank, trade agreements with neighboring states or a series of trading preferences such as those under the GATT.

The 'oil for food' agreement established in relation to Iraq (Resolution 706 August 1991) is another example of the kind of compromise which can be made in this context. In this agreement, Iraq was to have been permitted to export petroleum and petroleum products with the express permission of the relevant Security Council Sanctions Committee. The payment for these exports would have been placed in a special account for the purpose of providing humanitarian assistance to the people of Iraq and for the Compensation Fund established to assist in covering the costs of the United Nations in the Iraq-Kuwait crisis. This agreement was eventually rejected by Iraq on the grounds that it was an infringement

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[27] Note by the President of the Security Council, S 25036.

[28] "Cooperating for Peace", Gareth Evans, at pp.139

[29] Ibid. Senator Evans also comments, at p.139, that "[t]he joint action by the UN and the OAS in response to the crisis in Haiti is a good example of a similar strategy: in an agreement brokered by the UN and the OAS between the de facto authorities and the legitimate government, a series of steps was established to restore democratic processes and return President Aristide, with specific triggers to allow for the suspension and eventual lifting of sanctions".

of its sovereignty. None the less, the 'oil for food' agreement can be seen as a constructive model of the kind of agreement which could be used in the future.

VI.2 Reinforcement and Suspension of Sanctions measures

It has been necessary in a number of cases for sanctions to be reimposed or upgraded, as in the case of Haiti. It can be useful in this regard to leave open the possibility for increasing the severity of sanctions in the event that they do not achieve their goal. A reinforcing of a sanctions regime in this way can have the effect of increasing pressure on the target state while avoiding the need to resort to more coercive measures.

FINAL REMARKS

It is clear from the general survey incorporated in this working document that the sanctions instrument is currently undergoing an evolutionary process. In addition it is not intended that this working document be anything more than a starting point for possible further discussion. Therefore, at this stage, no final conclusions will be drawn, nor recommendations presented, before the topic has been more thoroughly discussed within, as well as outside, the UN framework.

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Australia-The Netherlands

QUESTIONNAIRE

Draft questionnaire on the application of collective economic sanctions by the UN Security Council through national measures of individual States.

( ) please mark
..... please fill in (in case of lack of space, please write on added blanc page)

1. Questions on national legislation.

1.1
A.
What is in general terms the legislative basis under national law on which measures to apply sanctions resolutions of the UN Security Council (UNSC) are taken?
( ) Constitution
( ) Formal legislation.....(name of the law)
( ) Decree.....(name of the decree)
( ) Other.....(name)
B.
Please add relevant passages translated into English:
.....
.....
.....
.....
.....

1.2
Could you indicate whether there is a reference in your Consitution or other national legislation to the application of decisions of international institutions, particularly binding resolutions of the UN Security council?
.....
.....
.....
.....
.....

1.3
A.
What form(s) of national law is are used to implement sanctions resolutions of the Security Council (a combination is possible)?
( ) Emergency law
( ) Formal legislation
( ) Decree
( ) Regulations

/...

( ) Order
( ) Combination of the above. .....
.....
.....(names)
( ) Other. .....
.....

B.
Does a standard implementation procedure exist for all UN sanction regimes?
( ) Yes.
( ) Yes. but there are exemptions.
( ) No.

1.4
What is the reason for the absence of a standard implementation procedure for Security Council sanctions regimes in the national implementation? (in lack of space. please write on added blanc page)
.....
.....
.....
.....

1.5
What is the average timeframe in which sanctions are implemented on the national level?
( ) 1 day
( ) 2 - 5 days
( ) 5 days - 1month
( ) longer than 1 month

Australia-The Netherlands

2. National practice of execution, implementation and interpretation of sanctions resolutions.

2.1

A.

Which government agency(ies) is/are responsible for the implementation and execution of the national UN sanctions legislation?

( ) National coordinator, ...(name)
( ) Ministries, ...(name)
( ) Regional level, ...(name)
( ) Local level, ...(name)
( ) Police
( ) Customs
( ) Other.....
.....
.....(name)

B.

Which government agency(cies) is/are responsible for the interpretation of the national UN sanctions legislation?

( ) National co-ordinator, ...(name)
( ) Judiciary.....(name)
( ) Ministry(ies).....(name)
( ) Regional level, ...(name)
( ) Local level, ...(name)
( ) Police
( ) Customs
( ) Other.....
.....(name)

2.2

A.

Which mechanisms exist in your country with respect to enforcement of Security Council sanctions resolutions?

( ) Police
( ) Costums
( ) Judiciary
( ) O t h e r
.....
.....(name)

B.

Did your enforcement agencies establish the existence of any violations concerning UN sanctions regimes?

( ) No.
( ) Yes.

2.3

/...

Non-paper

Is there national jurisprudence/case law concerning violations of Security Council sanctions regimes?

( ) No.

( ) Yes, concerning the sanctions regime:

- ( ) Iraq
- ( ) Somalia
- ( ) Angola (UNITA)
- ( ) Haiti
- ( ) States emanating from the Republic of Yugoslavia (arms embargo)
- ( ) Bosnia-Herzegovina
- ( ) FRY (Serbia-Montenegro)
- ( ) South-Africa
- ( ) Southern Rhodesia
- ( ) Others..... .....
  .....
  .....
  .....(names)

B.

Please give the reference to any published decision of your national courts in this field:

.....
.....
.....

2.4

What kind of reporting (to parliament or otherwise) and monitoring mechanisms exist in your country with respect to the application of Security Council sanctions resolutions?

.....
.....
.....
.....
.....

2.5

Did your Government pass any administrative orders or announcements regarding public information on the application of sanctions resolutions? If so, please elaborate on its follow-up.

.....
.....
.....
.....

2.6

Could you indicate your assessment on the question of uniform implementation and interpretation of UN sanctions regimes among UN member States?

.....
.....
.....

/...

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.....

.....

2.7

Would you be in favour of an enhanced role of UN sanctions committees in interpreting UN sanctions resolutions or do you consider that it is up to States to interpret them? Or do you see other alternatives?

.....

.....

.....

.....

.....

.....

2.8

Is there regular consultation of your government on the application of UN sanctions with one or more of the following organisations?

( ) business associations
( ) non-governmental organisations
( ) other private organisations
( ) other.....(name)

Non-paper

3. Special economic problems

3.1

A.

Did your country experience any special economic problems as a result of the application of Security Council sanctions resolutions?

( ) No. (please continue with question 3.2)

( ) Yes.

B.

Did your country ever adress the Security Council under Article 50 of the UN Charter?

( ) No. (please continue with question 3.2)

( ) Yes. . concerning the UN sanctions regime:

- ( ) Iraq
- ( ) Somalia
- ( ) Angola (UNITA)
- ( ) Haiti
- ( ) States emanating from the former Republic of Yugoslavia (arms embargo)
- ( ) Bosnia-Herzegovina
- ( ) FRY (Serbia-Montenegro)
- ( ) South-Africa
- ( ) Southern Rhodesia
- ( ) Others..... .....
  .....
  .....
  .....(names)

C.

Please add the relevant UN document numbers in reference to question 3.1.B..

.....
.....
.....
.....
.....

3.2

Do you have any suggestions on the possible improvement of the Article 50 procedure?

.....
.....
.....
.....
.....

4. The relationship of the national government with the United Nations

4.1

What is your country's experience with the notification/no-objection procedure with respect to humanitarian supplies exempted from the UN sanctions?

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.....
.....
.....
.....
.....
.....

4.2
Did your country ever contact a UN Sanctions Committee?
( ) No.
( ) Yes, in case of (multiple answers possible):
( ) clarification of a specific sanctions resolutions
( ) interpretation of a specific sanctions resolution
( ) problems with extraterritorial jurisdiction
( ) Other.....
.....
.....(explanation)

4.3
Does your Government report to the United Nations on the way your country applies the Security Council sanctions resolutions?
( ) No.
( ) Yes.
.....
.....(UN document numbers)

4.4
Would you be in favour of more streamlined reporting procedures for States on the application of the various sanctions resolutions, for example to be handled by a standing committee of the Security Council?
.....
.....
.....
.....
.....

5. Termination of sanctions resolutions

5.1
Did you encouter any special problems in the process of terminating UN sanctions regimes? If so, please specify.

.....
.....
.....
.....
.....
.....

5.2
Do you have any suggestions for improvements regarding the lifting of UN sanctions at the UN level?

.....
.....
.....
.....
.....

6. Miscellaneous

6.1
Do you have any additional observations on other issues not referred to above?

.....
.....
.....
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.....
.....

6.2
Is it deemded necessary, for the effectiveness of this questionnaire, to make some adjustments? If so, please specify.

.....
.....
.....
.....

UNITED NATIONS

A S

General Assembly
Security Council

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GENERAL ASSEMBLY
Fiftieth session
Items 28 and 92 of the provisional agenda*
THE SITUATION IN BOSNIA AND HERZEGOVINA
THE SITUATION IN THE OCCUPIED TERRITORIES OF CROATIA

SECURITY COUNCIL
Fiftieth year

Letter dated 1 August 1995 from the Chargé d'affaires a.i. of the Permanent Missions of Croatia and Bosnia and Herzegovina to the United Nations addressed to the Secretary-General

We have the honour to enclose herewith a copy of the joint letter dated 1 August 1995 from the Minister for Foreign Affairs of the Republic of Bosnia and Herzegovina, Muhamed Sacirbey, and the Deputy Prime Minister and Minister for Foreign Affairs of the Republic of Croatia, Mate Granić, addressed to the five-nation Contact Group on the Republic of Bosnia and Herzegovina, and to Mr. Carl Bildt, Co-Chairman of the International Conference on the Former Yugoslavia.

We would kindly request your assistance in circulating this letter and its annex as a document of the General Assembly under items 28 and 92 of the provisional agenda, and of the Security Council.

(Signed) Ivan Z. MISIC
Chargé d'affaires of the
Permanent Mission of the Republic
of Bosnia and Herzegovina to
the United Nations

(Signed) Vladimir DROBNJAK
Chargé d'affaires of the
Permanent Mission of the Republic
of Croatia to the United Nations

* A/50/150.

Annex

Letter dated 1 August 1995 from the Minister for Foreign Affairs of Bosnia and Herzegovina and the Deputy Prime Minister and Minister for Foreign Affairs of Croatia addressed to the Contact Group and to the Co-Chairman of the International Conference on the Former Yugoslavia

On 5 July 1995, we forwarded our joint communication to the Security Council indicating our position regarding the issues of mutual recognition, effective border closing and the easing of sanctions with the respect to the Federal Republic of Yugoslavia (Serbia and Montenegro). It is our view that this position has not been taken into consideration and in the latest proposals brought forth as a result of extensive discussions between Mr. Carl Bildt and the authorities in Belgrade. In addition, it is our view that the actions of Belgrade with respect to the Republic of Bosnia and Herzegovina and the Republic of Croatia have not been consistent with the objectives of mutual recognition.

More specifically, the proposals forwarded do not include mutual recognition between the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), but at best a "mirage" recognition of some of Bosnia and Herzegovina only as defined by Mr. Milošević and the authorities of the Belgrade regime, which is unacceptable to our Governments. Croatia and Bosnia and Herzegovina cannot lend their support to such a policy change.

In addition, there are no concrete measures to reverse the consequences of aggression and, in particular, the closing of the border. The existing partial suspension of the sanctions with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer be justified on the theory that Belgrade regime has really closed the border. To the contrary, recent developments in eastern and western Bosnia and Herzegovina offer ample proof that the Belgrade Government and, specifically Mr. Milošević, has not only failed to influence the so-called Croatian and Bosnian Serbs positively, but has effectively encouraged them to intensify their military option and ethnic cleansing.

Threatening amassing of the Army of Yugoslavia troops and heavy armour on a large scale in Eastern Slavonia before the eyes of the United Nations forces testifies even more clearly as to the real aims and goals of the Milošević regime: territorial aggrandizement and annexation of parts of the sovereign territories of Croatia and Bosnia and Herzegovina.

The sanctions thus must not be further suspended or alleviated until the Federal Republic of Yugoslavia (Serbia and Montenegro) publicly renounces and in practice refrains from occupation of parts of the sovereign territories of Bosnia and Herzegovina and Croatia.

In this light, we consider any plans aimed at any further easing of the sanctions, including proposals to that effect presently being circulated, as totally unjustified and extremely detrimental to the interests of peace and

security in the area. As a matter of fact, just the opposite is called for if tranquillity is to return to south-eastern Europe.

Finally, the "sanctions easing" methodology is unacceptable as well as inconsistent with the term "suspension".

We, for our part, remain fully prepared to participate in a constructive dialogue regarding mutual recognition between the three countries and to effect the consequences in our countries and borders.

It is our hope that, while deliberating your next move, you will bear fully in mind the positions of our two Governments as stated above.

(Signed) Muhamed SACIRBEY (Signed) Mate GRANIĆ